S.B. CIVIL WRIT PETITION NO.1431/2007.
Ramesh Chand
Vs.
The Judge, Labour Court, Jodhpur & Anr.

Date of Order : 24th September 2007

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. V.K. Sharma, for the petitioner.
Mr. Hemant Choudhary, for the respondents.

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BY THE COURT:

This writ petition has been preferred against the award dated 19.01.2007 made by the Labour Court, Jodhpur in Case No.307/2001 answering the dispute referred by the State Government in the manner that raising of the dispute after 16 years of the alleged retrenchment is not proper and the petitioner-workman is not entitled for any relief.

From the material placed on record, it emerges that the State Government by its notification dated 25.07.2001 referred the following dispute for adjudication to the Labour Court :-

> "क्या श्रमिक श्री रमेशचन्द्र पुत्र श्री भीकाराम आचार्य नकास गेट नागौर द्वारा अपनी सेवामुक्ति का विवाद 16 वर्ष पश्चात् उठाना उचित है ?यदि हॉ तो उसके नियोजक अध्यक्ष / अधिशाषी अधिकारी नगरपालिका मण्डल नागौर द्वारा दिनांक

1.8.85 से सेवा से पृथक किया जाना उचित एवं वैध है ?
यदि नहीं तो श्रमिक किस राहत को पाने का अधिकारी है ?"

The petitioner alleged in his statement of claim that he was appointed by the non-applicant on 28.07.1983 on the post of helper as a daily-wage employee; that his services were terminated on 12.09.1983 and he was again appointed on 11.05.1984 and continued to work till 01.08.1985 when his services were terminated without any reason and without any notice; that he had regularly worked for 240 days and his services were terminated without compliance of the requirements of Section 25-F of the Industrial Disputes Act, 1947 ('the Act'); that the employer violated the provisions of Section 25-G of the Act also and the persons junior to the petitioner are continuing in service; that the employer did not issue relevant seniority list; and that various persons were taken in employment without making an offer to the petitioner. The petitioner alleged that he was an illiterate person and for the staff of the employer Municipality extending assurance, could not raise the dispute earlier. The petitioner also alleged that he was taken back in service on 24.01.2000 but after two months and six days, was again removed on 01.04.2000.

The non-applicant contended in its reply that the petitioner worked on daily wages only as an unskilled labourer and not on the post of helper; that he was removed on

01.09.1983 when his services were not required further; and was again employed as a daily-wager on 11.05.1984; that the petitioner did not report on work after 01.08.1985 as he was aware of the fact that the specific work for which he was engaged has come to an end; and that the petitioner has not worked in any calendar year for 240 days. The non-applicant submitted that from 24.01.2000 to 31.03.2000 the petitioner was engaged as an unskilled labourer for the regular staff being on strike; and that since the petitioner was engaged only for the specific work, it was not proper to include in the seniority.

After taking evidence of the parties and with reference to the material on record, the learned Labour Court has essentially observed that there was no justified cause for raising of the dispute after 16 years; and with reference to the latest decisions of the Hon'ble Supreme Court has held that no dispute existed after such inordinate delay. The learned Labour Court has also made observations to the effect that the petitioner has not shown if he attended on the work after 01.05.1985 and it was reasonable to infer that he had voluntarily abandoned the job. In relation to the engagement in the year 2000, the learned Labour Court observed that the petitioner was engaged on 24.01.2000 merely on contract and even otherwise such engagement of the year 2000 was not the subject matter of reference.

The petitioner has questioned the award aforesaid with the submissions that the learned Labour Court has been in error in not considering that the petitioner is an illiterate person and the officers of the respondent No.2 extended assurance to reinstate him in service and then, the claim of similarly situated person in Case No.142/1996 had been allowed on 09.10.2000; that the Labour Court has failed to consider that the persons junior to the petitioner were still working but his services were terminated without following the mandatory requirements of the Industrial Disputes Act; and that the Labour Court has erred in not deciding the dispute between the parties when the petitioner alleged that he was working on the post of helper whereas according to the respondent No.2 he was allegedly working as semi-skilled labourer. The contesting respondent, on the other hand, has supported the award impugned with the submissions that from the finding of the Labour Court it is clear that it were not a case of retrenchment but of abandonment; and that the Labour Court has rightly rejected the reference for the dispute having been raised after 16 years.

Having given a thoughtful consideration to the rival submissions and having examined the matter in its totality, this Court finds no cause or reason to interfere with the findings of the learned Labour Court.

While referring to its previous decisions, the Hon'ble Supreme Court in the case of Assistant Engineer, C.A.D., Kota

Vs. Dhan Kunwar : AIR 2006 SC 2670 has been pleased to observe:

> "6. It may be noted that so far as delay in seeking the reference is concerned, no formula of universal application can be laid down. It would depend on facts of each individual case.
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> 7. However, certain observations made by this Court need to be noted. In Nedungadi Bank Ltd. v. K.P. Madhavankutty and Ors. (2000 (2) SCC 455) it was noted at paragraph 6 as follows:
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> > "6. Law does not prescribe any time-limit for the appropriate Government to exercise its powers under Section 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since heel settled. Power is to be exercised reasonably and in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after a lapse of about seven years of the order dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale could not be the subject-matter of reference under Section 10 of the Act. As to when a dispute can be said to be stale would depend on the facts and circumstances of each case. When the matter has become final, it appears to us to be rather incongruous that the reference be made under Section 10 of the Act in the circumstances like the present one. In fact it could be said that there was no dispute pending at the time when the reference in question was made. The only ground advanced by the respondent was that two other employees who were dismissed from service were reinstated. Under what

circumstances they were dismissed and subsequently reinstated is nowhere mentioned. Demand raised by the respondent for raising an industrial dispute was ex-facie bad and incompetent."

8. In S.M. Nilajkar and Ors. v. Telecom District Manager, Karnataka (2003 (4) SCC 27) the position was reiterated as follows (at para 17) :

"17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree. It is true, as held in M/s. Shalimar Works Ltd. v. Their Workmen (AIR 1959 SC 1217) (supra), that merely because the Industrial Disputes Act does not provide for a limitation for raising the dispute it does not mean that the dispute can be raised at any time and without regard to the delay and reasons therefor. There is no limitation prescribed for reference of disputes to an industrial tribunal, even so it is only reasonable that the dispute should be referred as soon as possible after they have arisen and after conciliation proceedings have failed particularly so when disputes relate to discharge of workmen wholesale. A delay of 4 years in raising the dispute after even re-employment of the most of the old workmen was held to be fatal in M/s. Shalimar Works Limited v. Their Workmen (AIR 1959 SC 1217) (supra). In Nedungadi Bank Ltd. v. K.P. Madhavankutty and others AIR 2000 SC 839 (supra), a delay of 7 years was held to be fatal and disentitled to workmen to any relief. In Ratan Chandar Sammanta and others v. Union of India and others (1993 AIR SCW 2214(supra), it was held that a casual labourer retrenched by the employer deprives himself of

remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief. Although the High Court has opined that there was a delay of 7 to 9 years in raising the dispute before the Tribunal but we find the High Court factually not correct. The employment of the appellants was terminated sometime in 1985-86 or 1986-87. Pursuant to the judgment in Daily Rated Casual Employees under P&T Department v. Union of India (AIR 1987 SC 2342) (supra), the department was formulating a scheme to accommodate casual labourers and the appellants were justified in awaiting the outcome thereof. On 16-1-1990 they were refused to be accommodated in the scheme. On 28-12-1990 they initiated the proceedings under the Industrial Disputes Act followed by conciliation proceedings and then the dispute was referred to the Industrial Tribunal-cum-Labour Court. We do not think that the appellants deserve to be non-suited on the ground of delay."

9. In the background of what has been stated above, the Labour court should not have granted relief. Unfortunately, learned single Judge and the Division Bench did not consider the issues in their proper perspective and arrived at abrupt conclusions without even indicating justifiable reasons.

10. Above being the position, the appeal is bound to succeed and we direct accordingly. No costs."

(underlining supplied)

Thus, with the authoritative pronouncement of the Hon'ble Supreme Court, it is clear that there is no formula of universal application in the relation to the delay in raising of the dispute; but such delay in raising of the dispute, of course, has its bearing on the right to relief. In the said case of Dhan Kunwar, the Hon'ble Supreme Court found a delay of about 8 years in raising of the dispute to be fatal and held that the Labour Court should not have granted the relief. Similarly, and on the same observations as noticed supra, the Hon'ble Supreme Court in the case of Chief Engineer Ranjit Sagar Dam & anr. Vs. Sham Lal: AIR 2006 SC 2682 has found the claimant not entitled for relief for delay of 9 years in seeking reference.

In the present case, even going by the assertions of the petitioner, it is apparent that he was not working with the respondents after 01.08.1985. The State Government made the reference only on 25.07.2001; and, as noticed, the Government was alive to the fact that the dispute was raised with a delay of about 16 years; and thus, apart from the question of validity of termination, also referred the question if raising of dispute after 16 years was justified? With reference to the decisions in Dhan Kanwar and Shyam Lal (Supra) this court is of opinion that even if the Government would have refused to refer the present matter at all, such proposition too

would not have been held altogether unjustified in the fact situation of the present case.

In an overall comprehension of the matter, it appears that the petitioner has otherwise never attempted to raise the dispute but took the chance of raising the dispute and seeking reference only after or around the time the respondent choose to take his services from 24.01.2000 to 31.03.2000 during some strike. In the fact situation of the present case, the suggestions about illiteracy of the petitioner or assurance by the staff of the respondent Municipality remain baseless; and do not make out a case of raising of the dispute bona fide.

This Court is clearly of opinion that even when the legislature in its wisdom has not provided any time limit for making reference; such liberty could only be construed as being meant for relief in cases of bona fide disputes and not as if providing a licence to every person to walk in at any time with any proposition with reference to some remote engagement with the employer once upon a time. The learned Labour Court has not committed any illegality in finding that raising of the dispute after 16 years was not proper.

Other submissions about the respondent continuing with junior persons or engaging other persons are of uncertain nature and do not make out any case for relief in favour of the petitioner. Even in that relation, it appears that the respondent has not acted unfair; and rather engaged the petitioner for

about two months, from 24.01.2000 to 31.03.2000, on contract basis when his services were so required due to strike. In any case, once the finding of the Labour Court on the question of delay in raising the dispute is upheld, the other grounds sought to urged by the petitioner remain not of much relevance; and have no effect on the result of this litigation.

The writ petition fails and is, therefore, dismissed. No costs.

(DINESH MAHESHWARI),J.

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